IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 19040 of 2007(N)

PETITIONER:

THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM, REPRESENTED BY DEPUTY LAW OFFICER, SRI.RANJITH JOSEPH.

BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

RESPONDENTS:

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1. SRI.R.STEPHEN,
CHURCH VIEW, DHANUVACHAPURAM,
KOLLAYIL, NEYYATTINKARA.

2. THE KERALA LOK AYUKTA,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.S.NARAYANAN NAIR
SRI.SREEVALSAM GOPALAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 19040/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE COPY OF THE COMPLAINT NO.3210/2006 DATED 24.11.2006.

EXT. P2 : TRUE COPYOF THE STATEMENT FILED ON BEHALF OF KSRTC DATED 14.2.2007.

EXT.P3 : TRUE COPY OF THE ORDER OF THE KERALA LOK AYUKTA ON COMPLAINT NO.3210/2006 DATED25.4.2007.

RESPONDENT'S EXTS:

EXT. R1 (a) : COPY OF JUDGMENT DATED 26.4.2004 IN WRIT APPEAL NO.939 OF 2004.

K.M.JOSEPH, J.

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WP.(C) No. 19040 of 2007

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Dated this the 9th day of August, 2007

JUDGMENT

Petitioner Corporation challenges Ext.P3 order passed by the Kerala Lok Ayuktha and seeks a declaration that it has no jurisdiction to investigate and order the complaint in respect of payment of DCRG and Commuted Value of Pension in respect of the retired employees of the Kerala State Road Transport Corporation regulated by the order of the High Court in W.A. No.289 of 2001. According to the petitioner the Corporation is in dire straits and question of payment of pensionary benefits engaged the attention of this court and the matter came to be dealt with in W.A. 289 of 2001. In W.A. 289 of 2001 this court issued certain directions. The relevant portion reads as follows:

> "Corporation would keep a register of district wise and also state wise and the amount would be disbursed to the pensioners strictly on the basis of the state wise register kept by them. After disbursing the amount every month a statement would be filed before this Court.
>
> The retirement benefits would be disbursed strictly on the basis of the date of retirement unless otherwise ordered by the order of this Court."

2. The first respondent filed a petition before the Lok Ayuktha and obtained Ext.P3 order. According to him his daughter is suffering from 'extra hepatic portal vein obstruction' and she is undergoing treatment in PVS Memorial Hospital. Prolonged treatment including costly medicines are necessary, it is stated. Petitioner retired on 31.1.2005.

3. According to the petitioner there is no power with the Kerala Lok Ayuktha to direct deviation from seniority as the said power is vested only with this court in terms of the judgment. This is the short question which is raised by the petitioner.

4. I heard counsel for the first respondent. The first respondent has filed a detailed counter affidavit detailing his grievances. It is also submitted that KSRTC is making deviation from the principle of seniority and the Lok Ayuktha has jurisdiction in the matter and therefore the contention based on the judgment in W.A.289 of 2001 cannot stand.

5. After having heard counsel, I am of the view that there is merit in the contention of the petitioner Corporation that the Lok Ayuktha may not be endowed with the jurisdiction to order payment in

deviation from the principle of seniority. The payment of pensionary benefits is now governed by the judgment of the Division Bench in W.A. 289 of 2001. Therein this court directed payment in terms of seniority. Apparently this is in view of the financial stringency being faced by the Corporation. This court had clearly stated that the seniority will prevail unless otherwise ordered by this Court. In such circumstances, I would think that there is merit in the contention of the Corporation that the power to order grant of DCRG and Commuted Value of pension in deviation from seniority is vested with this court and it may not be open to the Lok Ayuktha to interfere in the matter of payment of pension. The judgment of a superior court is binding on the Lok Ayuktha. In the case relating to KSRTC, as the matter is governed by the judgment of the Division Bench, under which payment can be made only in terms of seniority and not exactly in terms of the rules, the decision of this court that deviation can be made by this court must bind the Lok Ayuktha also.

6. In such circumstances, it is declared that the Kerala Lok Ayuktha has no jurisdiction to investigate and order any complaint regarding the non-payment of DCRG and Commuted Value of Pension

to the retired employees of KSRTC, which is regulated by the judgment in W.A. 289 of 2001.

6. Learned counsel for the petitioner does not dispute the genuineness of the claim of the first respondent. He would only say that the first respondent would have to approach this court in view of the judgment in W.A. 289 of 2001.

7. I have of course found that the power is conferred only with this court. But at the same time I feel that in the facts of this case, when the genuineness of the claim is not disputed, while I declare the law, I feel that some relief should be granted to the first respondent.

Accordingly, while allowing the writ petition as above in terms of the declaration as above, there will be a direction to the petitioner to release either the DCRG or Commuted Value of Pension, whichever is higher to the petitioner within a period of three weeks from today.

(K.M. JOSEPH, JUDGE)

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